IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.617/2000

Prithvi Singh S/o Shri Bapu Lal
Versus
Union of India, C.B.I. (M.P.E.)

Date of Judgment :::: 15th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Shital Das with
Shri Shankar Lal, Counsel for accused-appellant
Ms. Shafali Sharma, Amicus Curiae
Shri S.P. Tyagi, for the respondent U.O.I., CBI (MPE)
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By the Court:-

This appeal, on behalf of accused-appellant Prithvi Singh S/o Shri Bapu Lal, is directed against the impugned judgment and order dated 18.8.2000 passed by the Special Judge (N.D.P.S. Cases), Jhalawar, in Sessions Case No.003/97, whereby the appellant was convicted under Section 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act, 1985') and sentenced to undergo 10 years rigorous imprisonment and a fine of Rs.1,00,000/- (Rupees one lac); in default of payment of fine, to further undergo 1 year's additional rigorous imprisonment.

The prosecution case, in brief, is that on 6.5.1991 Ram Murti, Inspector, Central Bureau of Investigation (for short, ('CBI'), and his CBI team

arrested accused Usman Khan and Satyanarain Soni at Kota and recovered contraband – opium and heroin from their possession. During interrogation of accused Usman Khan, it came on the record that the recovered opium was purchased by him from appellant Prithvi Singh. Thereupon, on 8.5.1991 Inspector Ram Murti PW-2 went along with his staff members to make enquiry in respect of above fact. The Station House Office, Police Station – Sunel, also accompanied them. They waited on the way near Reechar River flows near Paukhedi village, and saw accused Prithvi Singh coming on motorcycle; he was stopped and asked to state his name; he stated his name as Prithvi Singh. PW-10 Lakkhi Prasad, Dy. Superintendent of Police, disclosed before him his identity as Dy. Superintend of Police, CBI, and asked for his personal search and gave him option if wants – he may get himself searched either before Magistrate or before him, as he himself is a Gazetted Officer. The accused gave his consent for search in presence of Lakkhi Prasad, Gazetted Officer. The dickey of his motorcycle was opened and plastic bag containing contraband was recovered therefrom. The contraband was tested, and the same was found to be opium. It was weighed and total weight thereof was 1 kilogram and 600 gram. Two samples of 10 gram each were taken and sealed. The motorcycle was also sealed. The accused was arrested. The sample was sent for

chemical examination. After completion of investigation, a charge-sheet was filed against accused under Section 8/18 of the Act, 1985.

The trial court framed charge against the appellant under Section 8/18 of the Act, 1985, which was denied and trial was claimed.

The prosecution examined PW-1 C.L. Bansal, PW-2 Ram Murti, PW-3 Ramdayal, PW-4 Sukhdeva Ram, PW-5 Damodar Kachholiya, PW-6 Lalit Singh, PW-7 Mahendra Singh, PW-8 Razaq, PW-9 Devilal, PW-10 Lakkhi Prasad and PW-11 Ramkumar, and produced documentary evidence – Exhibit P-1 to Exhibit P-29.

The learned trial court, after considering the evidence on the record and submissions of both the parties, convicted and sentenced the appellant, as mentioned above.

The learned counsel for the appellant contended that so-called information about contraband in possession of the appellant was not reduced in writing by Ram Murti, the Inspector, and the same was not forwarded to his immediate superior officer, therefore, there is violation of Section 42 of the Act,1985.

It is further contended that no notice under Section 50 of the Act, 1985, was given to the appellant, therefore, the entire proceedings are

vitiated. The learned trial court, without considering the above aspect of the matter that there is no compliance of Sections 42 and 50 of the Act, 1985, wrongly convicted and sentenced the accused-appellant. Therefore, it was contended that the appeal be allowed and the appellant be acquitted.

The learned counsel for the appellant also contended that there is discrepancy in the seal used while sealing the sample. The FSL Report (Exhibit P-1) was not admissible; the seal, which was sealed, was not produced during testimony of witnesses before the trial court; the seal, which was used and sealed, was not handed over to independent person; the sample was not sent for examination immediately. On the basis of above submissions, it is contended that the impugned judgment passed by the trial court is liable to be set aside and the accused is entitled to get the benefit of doubt.

The learned counsel Shri S.P. Tyagi, appearing on behalf of CBI, supported the judgment of the trial court and contended that in the present case there is no violation of Section 42 or 50 of the Act, 1985. So far as other submissions are concerned, he contended that there is no merit in any of the submissions of the learned counsel for the appellant as there is no discrepancy in the seal used and sealed. The seal,

which was used, was handed over to independent person. FSL Report is admissible in evidence. Sample was sent for examination immediately. Initially, it was sent to Chandigarh but it was noted thereon that it should be examined at Delhi itself, therefore, it was again sent to Delhi, thus the delay occurred, but the seal of sample was found intact and no prejudice is caused to the accused in this regard. He, therefore, contended that the appeal filed by the appellant be dismissed.

I have considered the submissions of learned counsel for both the parties and examined the impugned judgment as well as the record of the trial court.

The trial court, in the impugned judgment, has considered the statements of the prosecution witnesses, in detail, and referred their statements regarding compliance of Sections 42 and 50 of the Act, 1985. The main witness in the present case on behalf of the prosecution is PW-2 Ram Murti, who has stated about compliance of each and every provision of the Act, 1985. Another witness PW-10 Lakkhi Prasad, Investigating Officer, has proved the prosecution case and also corroborated the statement of PW-2 Ram Murti. Exhibit P-1 is the FSL Report, wherein it was described that one sealed envelop containing ten gram brownish black substance along with polythene wrapper bearing mark Exhibit A-1 was received. The description

of another envelope was also given. The result of analysis was given with Exhibit A-1, which gave positive test for opium. Exhibit P-2 is the letter written by S.P. (CBI), to the Director, C.F.S.L., CBI, New Delhi. Exhibit P-3 is the recovery memo prepared by PW-10 Lakkhi Prasad. It bears the signature of PW-2 Ram Murti and other two witnesses. Exhibit P-4 is the driving-licence of accused Prithvi Singh with his photo. Exhibit P-10 is the sample of seal i.e. L.P. Exhibit P-11 is the personal search-memo-cum-arrest-memo of the accused. Exhibit P-12 is the site-plan. Exhibit P-13 is the search-memo. Exhibit P-14 is the memo of site-plan. Exhibit P-15 is the specific hand-writing and Exhibit P-16 is specific hand-writing of Prithvi Singh. Exhibit P-29 is 'Maalkhana' register. The prosecution witnesses have proved all the relevant documentary evidence – Exhibit P-1 to Exhibit P-29.

The trial court has considered the compliance of Section 42 and 50 of the Act, 1985, and has recorded a finding that no independent or separate secret information was received by Ram Murti or Lakkhi Prasad in the matter of possessing the contraband by Prithvi Singh. They had gone at Sunel to make an enquiry in the matter relating to 6.5.1991 against accused Satyanarain and Usman Khan, and during that enquiry they came to know from the statement of Usman Khan that he purchased the contraband from Prithvi

Singh. During enquiry in that matter, they recovered contraband from the possession of accused Prithvi Singh. In these circumstances, the provisions of Section 42 of the Act, 1985 were not attracted in the present case.

So far as applicability of Section 50 of the Act, 1985 is concerned, it is clear that the contraband was recovered from dickey of motorcycle and not from the personal search of accused Prithvi Singh and it was not a case of personal search, therefore, provisions of Section 50 of the Act were not attracted.

I have examined the matter in detail in the light of submissions of learned counsel for the parties as well as the reasons assigned by the trial court, and I find that the reasons assigned by the trial court for coming to a conclusion that provisions of Section 42 and 50 of the Act, 1985 are not applicable, are justified in the eye of law and the said finding of the trial court is absolutely based on sound reasonings in the facts and circumstances of the present case and the said finding does not call for any interference by this Court.

The other submissions of the learned counsel for the appellant regarding discrepancy in the seal, not handing over the seal to respectable person, not producing the seal during testimony of witnesses and

delay occurred in sending the sample of contraband are concerned, the trial court has already examined the matter and found that there is no merit in any of the above submissions.

I have also examined the matter in the light of submissions of learned counsel for the appellant and on the basis of the record of the case I find that there is no discrepancy in the seal prepared and sealed. It was handed over to respectable person also. The relevant Exhibit in this regard is also available on the record. F.S.L. Report (Exhibit P-1) has been proved by PW-1 C.L. Bansal and after considering the relevant Exhibits as well as the statements of the prosecution witnesses.

In view of the above discussion and the reasons, I do not find any force in any of the contentions of the learned counsel for the appellant. The trial court has rightly convicted and sentenced the appellant. No interference is called for in this appeal and the same is accordingly rejected.

(Narendra Kumar Jain) J.

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